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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of a Request for Review By Eureka Broadband Corporation of Decision of Universal Service Administrator	
Federal-State Joint Board on Universal Service	CC Docket No. 96-45
Changes to the Board of Directors of the National Exchange Carrier Association, Inc.	CC Docket No. 97-21

APPEAL OF DECISIONS OF THE UNIVERSAL SERVICE ADMINISTRATIVE COMPANY CONCERNING EUREKA BROADBAND CORPORATION'S REVISION TO FCC FORM 499-A AND APPLICATION OF CHARGES

Pursuant to Section 54.713 of the rules of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 54.713, Eureka Broadband Corporation ("Eureka" or the "Company") as successor-in-interest to Gillette Global Network, Inc. ("Gillette" or "GGN") hereby respectfully requests that the Commission grant this request for an appeal of two decisions of the Universal Service Administrative Company ("USAC"). Specifically, Eureka is disputing a series of decisions by USAC, which would result in the application of a total of $606,982.22 in Universal Service Fund ("USF") fees against Eureka. As explained herein in greater details, Eureka voluntarily approached USAC and the FCC to discuss the establishment of a payment plan (the "Voluntary Payment Plan") and to become fully compliant with its USF obligations pursuant to Section 254 of the Communications Act of 1934, as amended, 47 U.S.C. § 254. Nevertheless, USAC has chosen to, during the payment plan discussions, reject the filing of revised 499A Forms and to impose fees on Eureka, which would result in a double recovery to the USF.

INTRODUCTION AND EXECUTIVE SUMMARY

Eureka is a New York City-based resale and facilities provider of telecommunications and internet services to enterprise customers in New York, New Jersey, Maryland, Virginia, and Washington, D.C. Eureka offers businesses a single source for voice communications services, high-speed Internet, managed security services and data networking solutions. Eureka Broadband Corporation was established is 1998 and since that year has acquired seven (7) companies including GGN in December 2000.

On May 10, 2004[1], Eureka submitted a retroactive filing of (on behalf of GGN) Form 499-As from 1999 through 2004 (representing revenues from 1998 through 2003) as well as the Voluntary Payment Plan proposal thereby initiating formal negotiations with USAC and beginning the process of working with USAC to identify its USF-based obligations. At the time Eureka submitted its Voluntary Payment Plan, the Company did not believe that GGN had previously filed any Form 499-As concerning revenue generated during the relevant time frame between 1998 and 2003. Therefore, in May of 2004, Eureka believed it necessary to submit the 499A Forms to come into compliance and commence the Payment Plan negotiation and acceptance process with USAC and the FCC.

During the payment plan negotiation process, however, Eureka received an automatically generated letter from USAC advising Eureka that the new, "revised" FCC Form 499-As for the reporting years 2000 and 2001 (1999 and 2000 revenues) were being rejected ("2000/2001 Revised Filing"). The stated basis for rejection of the "new", revised form was the fact that, unbeknownst to any participants in the discussions at the time, GGN had, in fact, filed a FCC Form 499-A in 2000. Eureka only had the opportunity to review the aforementioned 499-A

[1] Copies of relevant correspondence between Eureka's counsel and the Commission and USAC are attached hereto at Exhibit 4.

after the Company's initial document submission to USAC in May 2004. Upon review of the filing, Eureka deemed the revenue accounting calculations, utilized as the basis for the 499-A, to be completely erroneous. Unfortunately, the "refilling" of a "new" 499 Form, according to USAC, violated USAC's policy that a carrier has no more than one year after filing a 499A Form to submit any adjustments to its reported revenues. Furthermore, USAC rejected Eureka's new, revised 2001 Form 499-A based on the identical policy. In fact, GGN never filed a Form 499-A for 2001. USAC, nevertheless, chose to estimate an amount due from GGN based upon its 2000 Form 499-A filing. At the time of the automated rejection by USAC, counsel for Eureka was actively discussing and negotiating, in good faith, with USAC and the FCC, the terms and possible conditions associated with Eureka's Voluntary Payment Plan. Eureka operated during the negotiations under the belief that, as part of the ongoing negotiations, USF-eligible revenues reported in the rejected 2000 and 2001 Form 499-As, rather than the revenues reported by GGN, would form the basis for any final USF assessment calculations. Eureka and its counsel therefore believed that USAC's rejection of its 2000 and 2001 Form 499-As did not prejudice its proposed Voluntary Payment Plan, and that an appeal of these rejections was not necessary. This understanding changed on September 9, 2004, at a meeting between Eureka, its attorneys, and representatives of the Commission and USAC, in which Eureka was told that the USF-eligible revenues GGN reported, and USAC assessed for 2000 and 2001, respectively were considered by USAC to be part of the total USF liability calculations. This amount, $250,373.23, which is the difference in USF-obligations Eureka may owe based on application of different revenue reporting is disputed by Eureka.

Second, Eureka also is seeking an appeal regarding an additional USAC decision concerning a disputed amount in the sum of $296,200.10. This amount represents USF payments made by Eureka through MCI, Inc. ("MCI f/k/a Worldcom"). During the relevant time-period, MCI served as Eureka's underlying carrier and passed through the applicable USF charges to Eureka, which were paid by the Company. Accordingly, the implication of USAC's decision is that the USF would receive a double payment based upon one, single revenue stream, which is facially contrary to applicable law, notions of basic equity, and public policy.

Finally, Eureka is disputing, and requests a decision by the Commission, concerning the penalties and fees of $60,408.89, which USAC is attempting to impose on Eureka for USF fees that were previously unpaid by GGN. The imposition of these fees is arbitrary and capricious and are not reasonably tied to the costs that USAC has incurred, or may incur in the future, in collecting Eureka's past due balance. In fact, Eureka came forward voluntarily to USAC in order to become fully compliant of all regulatory payments. USAC was spared the major expense and investment of valuable USAC and Commission resources to track down Eureka to obtain payment. Moreover, Eureka has, in full compliance with the Proposed Payment Plan guidelines, included interest payments at a rate of 9%, both in its Voluntary Payment Plan and in the payments made by the Company to date. By way of reference, between the time in which Eureka submitted its payment plan in May of 2004 and the date of this Appeal, Eureka has made payments to the USF totaling $357,265.82. USAC's application of late payment fees is entirely discretionary and due to the circumstances surrounding Eureka's good faith efforts, these fees should not be assessed against Eureka.

Based upon the foregoing, and as is described herein, Eureka respectfully requests that: (1) the Commission reverse USAC's decision to reject Eureka's adjusted filing of Form 499A-s for the years 2000 and 2001; (2) reject USAC's decision to impose USF-payment obligations based on previously contributed amounts paid by Eureka to its underlying carrier

MCI, and (3) reject USAC's discretionary decision to impose late penalties and fees against Eureka.[2]

BACKGROUND AND RELEVANT FACTS

GGN's original Form 499-A filing for calendar year 1999, which was due April 1, 2000, was filed on or about September 20, 2000 ("September 20, 2000 Filing"). As Eureka has now discovered, GGN's September 20, 2000 499 Filing contained errors most likely caused by GGN's incorrect revenue allocation. To that end, GGN inadvertently: (1) overstated its long distance revenues; and (2) understated its local revenues and enhanced services revenues. Unbeknownst to Eureka, GGN corrected the errors and attempted to file a revised Form 499-A on or about April 20, 2001 (the "Attempted First Revised Filing"). This filing was rejected by USAC. In 2001, USAC did not receive a Form 499-A from GGN, and therefore estimated 2000 revenues from the inaccurate September 20, 2000 Filing.

Notably, during 2001 and on a going-forward basis, GGN was providing its long distance services primarily on a resale basis, and was treated as an end user by its underlying carrier, MCI, for USF purposes. As a result of this type of arrangement, MCI was, in fact, recovering all, if not some amount in excess, of its USF charges from GGN, which GGN paid.[3]

As noted herein, on May 10, 2004, Eureka filed a Payment Plan Proposal and Form 499-As, reflecting revenues generated from 1998 through 2003. The forms were filed for three reasons: (1) to ensure Eureka was fully compliant with its regulatory payment obligations;

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2 The Commission has the authority to consider the decisions of USAC pursuant to Section 254 of the Act and Section 54.713 of the Commission's rules, 47 C.F.R. §54.713. *See also Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, Federal-State Joint Board on Universal Service, Report and Order, 13 FCC Rcd 25058, 25093, 25095 at ¶¶ 69, 72 (1998) (*"1998 Joint Board Order"*) ("We find that the Commission has the authority to review USAC decisions . . . . because USAC is administering the universal service support mechanisms for the Commission, subject to Commission rules and oversight").

3 *See* September 20, 2000 filing, where GGN certified that had been contributing to the USF through its underlying carriers, attached as Exhibit 1.

(2) to provide USAC with information from which to formulate an amount that Eureka owed to the USF; and (3) to initiate discussions and negotiations between Eureka, USAC, and the FCC as part of the process of entering into a Voluntary Payment Plan for any outstanding USF balance. In accord with the process, USAC forwarded an Acknowledgement of this filing on May 15, 2004, with an estimate of Eureka's outstanding balance based upon these forms. Through its standard operating procedures, on June 10, 2004, USAC sent Eureka a standard form letter notifying Eureka that its 2000/2001 Revised Filing, which represented revenues generated in 1999 and 2000, was rejected from consideration. The other Form 499-As, representing the years 1998, 2001, 2002 and 2003 were filed concurrently and accepted for filing, as there was no Form 499-A from Eureka or a related entity on already on file for these periods.

From this point forward, Eureka and its attorneys, engaged in discussions with representatives of the Commission, and USAC to discuss terms of the Voluntary Payment Plan. Eureka maintained the belief that any question of whether the revised filings would be accepted by USAC – ultimately – would be subject to and governed by these negotiations. Eureka continued to believe that in conjunction with its good faith negotiations that USAC would accept the previously (and systematically) rejected 2000/2001 Revised Filing and therefore incorporated into the Voluntary Payment Plan. Based upon this belief, Eureka continued the negotiations in good faith, did not file an appeal of this decision with the Commission and awaited a response from USAC of the proposed Voluntary Payment Plan. On September 9, 2004, Eureka and its attorneys received absolute confirmation ,for the first time, that USAC intended to include in the proposed Payment Plan obligation revenue amounts derived from the erroneous 499 Form GGN filed in 2000 and from the estimated Form USAC created to represent a hypothetical 2001 Form fling by GGN Therefore, formal notification of the rejection of the revenues, and the application of payments and penalties, occurred on September 9, 2004.

ARGUMENT

A. USAC SHOULD ACCEPT THE REVISED 2000/2001 FILINGS AND APPLY THOSE FILINGS TO EUREKA'S USF OBLIGATION ACCORDINGLY

USAC's response to Eureka's Revised 2000/2001 Revised Filing is inappropriate for a number of reasons: (1) USAC lacks statutory or any other authority to refuse to accept Eureka's revised submission; (2) USAC's action is inherently arbitrary and constitutes an abuse of discretion in the administration of the USF; (3) the result creates bad public policy; and (4) in the specific instance of the 2001 Form 499-A, this submission does not reflect a filing by GGN, which did not file for that year, or by Eureka, which the FCC rejected. Instead, it reflects only a projection of revenues created by USAC, based upon erroneous data from the GGN filing submitted in 2000. USAC should therefore accept the submissions in a manner similar to other filings made by Eureka for past years as described in the Voluntary Payment Plan.

1. USAC Lacks Authority To Impose A One-Year Limit That Precludes Parties from Submitting Evidence of an Overpayment

Section 254 of the Communications of Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), provides generally for the equitable and nondiscriminatory contribution by telecommunications carriers to mechanisms established by the Commission and the Federal-State Joint Board to preserve and advance universal service.[4] Although its existence was not mandated by the Act, USAC was established at the direction of the FCC as an independent not-for-profit entity with the sole function of administering the

[4] 47 U.S.C. §254.

Universal Service Fund ("USF") and other universal service support programs.[5]

USAC does not possess any independent authority to create decisional or interpretative rules governing the USF programs. The Commission and the Federal-State Joint Board retain full authority and control over the USF programs, and USAC at all times remains subject to FCC oversight.[6] The limited responsibilities delegated to USAC are clear in the rules and regulations setting forth the scope of USAC's charter. Specifically, Sections 54.702(a) and (b) of the Commission's rules clearly state that USAC is responsible for administering the USF programs, including billing, collection and disbursement of USF funds.[7] In addressing early concerns over the role of USAC, the Commission has emphasized that USAC's functions are to be "exclusively administrative",[8] noting that Section 54.702(c) expressly limits USAC's power by stating that USAC "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission."[9]

Despite the fact that USAC is clearly prohibited from establishing policy or addressing uncertainties in the administration of the USF on its own, it has clearly done so in this case. In rejecting Eureka's request, USAC has relied on its "previously adopted policy," approved by the USAC Board of Directors during a USAC Board of Directors meeting on July 27, 1999, limiting the period for carrier-initiated adjustments to USF submissions. According to

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5 *See 1998 Joint Board Order*, 13 FCC Rcd at 25064, 25065-66 at ¶¶ 12, 14.

6 *See In the Matter of Federal State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 9192 at ¶¶ 813-815 (1997) (*"1997 Joint Board Order"*); *1998 Joint Board Order* at 25065 at ¶ 14; *see also* 47 U.S.C. § 254, *et seq.*

7 47 U.S.C. §§ 54.702(a)-(b).

8 *1998 Joint Board Order* at 25067 at ¶ 16 (*responding to comments of BellSouth, Sprint, and US WEST*).

9 47 U.S.C. §§ 54.702(c).

an Action Item entitled, "Recommended Deadline for True-Up of Form 457," USAC's staff recommended the following to the Board:

> "[b]eginning with the September 1, 1999, data submission; carrier initiated requests for changes in reported revenues be limited to 12 months . . . . Changes to prior submissions as a result of an audit of a carrier's revenue reported on the Form 457 would not be impacted by the proposed limitation."[10]

USAC's staff offered the following rationale to support adoption of the recommendation:

> "Historically, USAC has accepted any changes in revenue information reported by telecommunications service providers, regardless of when the changes were reported. It is becoming increasingly burdensome administratively to continue accepting revisions to reported revenue information indefinitely . . . . Each time a change is reported that affects end-user billed revenue, it necessitates revising the service provider's billed amounts for the period impacted by the change."[11]

The adoption of such a policy is completely unauthorized and inappropriate.

First, if USAC's one-year limit for acceptance of corrected USF filings is deemed to be justified and appropriate --which it is not-- such a limit was not properly adopted by USAC as an administrative policy. Rather, if such a rule should be properly adopted, it would require the Commission to follow its normal notice and comment rulemaking procedures. A one-year limit is more than a mere administrative or organizational measure. It is a decisional rule with potentially material adverse impact on contributors as well as on the USF as a whole. In Eureka's case, the automatic imposition of USAC's one-year limit clearly results in such a materially adverse impact, namely the disputed $296,200.10. USAC's adoption and imposition of such a rule, without public notice or comment that results in the confiscation of a carrier's

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10 The specific resolution stated, "RESOLVED, That the USAC Board of Directors directs staff to no longer accept carrier initiated requests for changes in revenues reported on prior FCC Form 457 beyond 12 months from the initial submission of the Form in question." *See Action Item # aBOD05*, attached hereto as Exhibit 2.

11 *See Action Item # aBOD05.*

property without just cause, violates of basic notions of due process under the Fifth Amendment of the U. S. Constitution.[12]

Second, USAC's one-year policy actually contravenes the rules that expressly contemplate that refunds will be given, without consideration of any time limit. Section 54.713 of the Commission's rules states that, "[o]nce a contributor complies with the Telecommunications Reporting Worksheet filing requirements, the Administrator may refund any overpayments made by the contributor, less any fees, interests, or costs."[13] Therefore, contrary to USAC's implication, the Commission's regulations contemplate that USAC *will provide refunds* to contributors. Under such circumstances, USAC does not posses independent authority to thwart the clear intent of the rules by refusing to refund an overpayment, and, by extension, refusing to exclude the over-estimated amount from any remaining USF-balance attributable to Eureka.

Third, USAC's rationale for adopting the policy contradicts the rules that govern its operations. The one-year policy, adopted ostensibly to avoid an "administrative burden," ignores the provisions of Section 54.713 of the Commission's rules, which specifically permits USAC to receive compensation for administrative tasks. Because USAC is authorized to recover its costs for such tasks, arbitrary policies adopted to avoid the necessity for undertaking such tasks are completely unjustified.

Fourth, USAC attempts to support its position by stating to the Commission that:

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[12] By contrast, we note that the Commission has used notice and comment procedures to adopt rules for refunds in other contexts, *e.g.*, in cases concerning refunds of filing fees paid by applicants for commercial broadcast licenses. *See In the Matter of Applications of Wade Communications, Inc., Ellen R. Evans d/b/a Heartland Communications, and B.R. Clayton and Martha S. Clayton d/b/a Middleton Radio*, Memorandum Opinion and Order, 16 FCC Rcd 20708, 20710 at ¶ 7 (2001). *See also In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses*, First Report and Order, 13 FCC Rcd 15920, 15933, 15939 ¶¶ 32-33, 49 (1998).

[13] 47 C.F.R. § 54.713

"We are unable to accept the revision because it was not filed within one year of the original submission."[14] Eureka notes the corollary – namely, that no Commission regulations *restrict* USAC from accepting a worksheet, nor do any Commission regulations govern the process by which it will accept, consider, or reject any worksheets filed out-of time. Thus, USAC is without discretion to reject a corrected worksheet, whenever it is filed. The same letter was also received in regard to the 2001 Form 499-A, even though GGN never filed a 2001 Form. Rather, USAC computed an amount it believed GGN owed, based upon the erroneous 2000 Filing.[15]

Finally, nowhere is there statutory or regulatory authority cited to support the USAC policy and nowhere is any indication given that USAC sought public comment or consulted with the Commission prior to adopting the policy. Thus, the adoption of, and reliance upon, such a policy directly violated the Administrative Procedures Act and contravenes express limits on USAC's discretion.

2. USAC's Policy is Arbitrary And An Abuse of Discretion

Even if USAC is deemed to have the authority to adopt policies concerning the filing of corrected worksheets, the particular policy at issue here is manifestly arbitrary and unfair. As such, it is a complete abuse of USAC's discretion.

As an initial matter, USAC's policy is striking in its asymmetry. USAC has limited a carrier's ability to recover refunds, or adjust the reporting mechanism to accurately portray a contributor's revenues, beyond a date certain, but has accepted no corresponding limit on its own ability to conduct audits, impose changes to reported revenues, and collect under-payments. It is simply inappropriate for USAC to have such unequal and limitless discretion to

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14 Letter from USAC, dated June 10, 2004, Re: 2000 Form 499-A Revision Rejection.

15 Facsimile Cover Sheet from Michelle Tilton of USAC to Tadas Vaitkus of Eureka in regards to GGN filings, attached as Exhibit 3.

recover revenues from carriers, while imposing an apparently strict limit on the ability of carriers to obtain refunds.

USAC justifies its policy in part with the argument that there are few indicia of reliability in Form 499 revisions beyond the one-year deadline. However, USAC cannot have it both ways. If USAC feels confident that sufficient indicia of reliability exist for it to recover under-payments after a one-year period, it should possess the same level of confidence that reliable indicia exist to support identification of over-payments and refunds due to a carrier, as the Commission's rules contemplate. [16]

Absent a waiver, the USF programs are unjustly enriched. Such a result flouts the Commission's directive that USAC recover all funds due in an equitable and nondiscriminatory manner,[17] and cannot be justified.

3. USAC's Decision Is Bad Public Policy

The Commission must not uphold USAC's decision because it will have negative implications for the contribution methodology underlying the USF program. To date, carriers have reported revenues subject to USF contributions with the understanding that if they over-report revenues and make excess contributions, the opportunity will exist to receive consideration for the amounts over-estimated.[18] To be sure, carriers have the incentive to be as accurate as possible in their filings, but as is evident from Eureka's case, unintentional and unforeseen mistakes inevitably will occur. If USAC's position prevails, carriers would not be

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16 By analogy, the United States Internal Revenue Code permits taxpayers to file any claim for a refund within three years, 26 U.S.C. § 6511(a); and correspondingly subjects the Internal Revenue Service ("IRS") to a general three year statute of limitations for filing suit for a deficiency assessment, 26 U.S.C. § 65019(a).

17 *See generally*, 47 U.S.C. § 254.

18 *Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T*, Report and Order and Order on Reconsideration, 16 FCC Rcd 5748, 5733 at ¶12 (2001).

confident that USAC will fairly address and resolve such honest mistakes.

Most critically, the unchecked implementation by USAC of its policy limiting the revision of 499-A Forms may lead to substantial over-collection of USF contributions. In the case of Eureka, who came forward to USAC to meet its outstanding obligations, the over-estimation based upon the 2000 Form filed by GGN and the Estimate of the 2001 revenues would constitute a significant sum over the amount Eureka actually owes based on its actual revenues. On a cumulative basis over time, and in cases involving additional carriers, distortions in the amounts collected will be even greater. USAC has offered no explanation of whether or how adjustments will be made for such distortions. The implications of USAC's policy are that over-collections and over-estimations left without correction for more than a year will simply be retained without any adjustment. The indefinite retention of such over-collections and over-estimations is not authorized, and would threaten the integrity of the USF program and may place a chilling effect on other contributors who have been remiss in contributing properly to the USF from coming forward to meet their obligations, as Eureka has in this case.

4. Eureka's May 10, 2004 Filing of a 2001 499-A Form Should be Accepted for Filing

GGN never filed a Form 499-A, in 2001, to account for its 2000 revenues and therefore was not billed properly by USAC.[19] Moreover, the USAC Administrator billed GGN in 2001 based upon an estimate of its 2000 revenues driven by the previous year's filing, an action, which was well within Commission Regulations.[20] With this action, there is the

19 Facsimile Cover Sheet from Michelle Tilton of USAC to Tadas Vaitkus of Eureka in regards to GGN filings, attached as Exhibit 3.

20 Under §54.709(d) of the C.F.R. the USAC Administrator shall bill a contributor "based upon data the Administrator has available, including, but not limited to, the number of lines presubscribed to the contributor and data from previous years, taking into consideration any estimated changes in such data."

implication that this action can be undone upon proper filing of the outstanding Form 499-A by the contributor.[21] This principle should extend to Eureka's case as well.

In this instance, Eureka has been negotiating in good faith on its Voluntary Payment Plan. During this process, Eureka filed what it believed to be all previously un-filed Form 499-As, including the 2001 Form 499-A. This was necessary for USAC to determine Eureka's amount due and negotiate a Voluntary Payment Plan. All of these previously un-filed Form 499-As were accepted by USAC, except for this particular one. This 2001 Form 499-A was rejected because the USAC Administrator had already assessed an amount to GGN for 2000. USAC argues that GGN *constructively* filed its 2001 Form 499-A. Therefore, under USAC's administratively unsound one-year policy, the Company was unable to adjust the amounts downward. If GGN had paid this invoice, the rules state that GGN would have been able to seek a refund of the overpayment. Extending this principle to the case here, Eureka should be allowed to receive the same benefit of having the amounts in the revised 2001 Form 499-A calculated as part of any remaining USF-balance which may be attributable to Eureka.

B. EUREKA HAS NO OBLIGATION TO REPAY AMOUNTS THAT HAVE BEEN PAID TO UNDERLYING CARRIERS INCLUDED IN ITS CURRENT OBLIGATION

MCI considered GGN, and later Eureka, an end user for purposes of USF collection. As such, MCI passed through USF charges to GGN, who paid them. Therefore, GGN understood that many of its USF obligations were already being met through their payments to MCI and stated accordingly on its 2000 499-A that was filed on September 20,

[21] See §54.713 C.F.R., stating, "Once a contributor complies with the Telecommunications Reporting Worksheet filing requirement, the Administrator may refund any overpayments made by the contributor…".

2000.[22] These payments were made to MCI with a good faith belief that they were indeed going to USF on GGN's behalf.

During the course of the negotiations of this Voluntary Payment Plan, Eureka was told that any payments made to MCI were not going to be deducted from the outstanding balance and must be included as part of the Voluntary Payment Plan, and that Eureka's recourse for recovering these moneys was to seek repayment from MCI. There is nothing in the rules that allows for a claim of this nature between carriers. Further, USAC's policy in this regard adds additional unfair costs to the carriers who are caught in this position, by forcing them to incur litigation costs on a matter that can be resolved through a simple accounting cost adjustment.

Finally, USAC's position that Eureka should seek refunds from MCI is inherently inequitable. MCI has already *remitted* the USF payments to the fund. If Eureka now pays the same amounts into the fund, there will be by definition a double payment by carriers and an over-recovery by USAC. At the same time, USAC's one-year limit on accepting revisions to 499-A Forms effectively would prevent MCI from obtaining a refund from USAC, thereby ensuring that the double payment into the fund could not be remedied. This would be, of course, an inequitable and illogical result.

It would be inequitable to force Eureka to make an additional payment of these revenues to USF, when it is MCI that took on the responsibility for this burden by treating GGN as an end user, and collecting and remitting USF payments. Further, there is no mechanism in

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[22] See Exhibit 1, the 2000 499-A, filed on September 20, 2000, Block 603, "Gillette Global Network, doing business primarily as a long distance reseller, has been contributing to the universal service fund [sic] through underlying carriers." In addition, GGN certified in the same block that it was exempt from contributing to Universal Service based upon this relationship with its underlying carrier. Further, this language also appears on its first attempted revision that was filed on April 28, 2004 that USAC rejected.

place to facilitate such a refund of these revenues.[23] Hence, the amount of $296,200.10 should be removed from the amount subject to any outstanding USF balance, which may be applied to Eureka.

C. USAC MAY NOT UNJUSTLY IMPOSE DISCRETIONARY CHARGES AGAINST EUREKA

Eureka contacted USAC to bring itself into compliance with the USF earlier this year. Eureka understood that it owed USAC for USF fees from its successee in interest, GGN, dating back to 1998. Under 47 C.F.R. §54.713, the USAC Administrator "may bill a contributor a separate assessment for reasonable costs because of that contributor's...late payment of contributions." Clearly, this assessment of the fee is discretionary, and tied to compensating USAC for costs associated with recovering these revenues for USF. In this case, however, Eureka came to USAC to account for its past, and come into compliance with its obligations. USAC did not have to seek out Eureka, nor did USAC have to commence collection proceedings against Eureka, and therefore likely expended no costs in order to receive these past due amounts from a company USAC likely did not know existed.[24] USAC has offered no explanation for these fees, other than they are late payment and late filing fees.

In fact, under the terms of the proposed Voluntary Payment Plan, Eureka will be paying an additional nine percent (9%) interest on the undisputed principal amount due to USAC. This interest charge will amount to approximately the same amount of money as USAC is seeking to recover as late payment and late filing fees. To allow USAC to recover both the interest and the late payment and late filing fees which would result in USAC receiving

[23] For illustrative purposes, if a party overpays a vendor for the tax on an item subject to sales tax, that party may petition to receive a refund from the applicable state tax authority, who is receiving the benefit of that windfall, rather than from the vendor itself. No such analogous process exists at USAC. *See*, by example, NY Tax Law §1139 (a).

[24] At the beginning of the process, a search was conducted for Form 499 Filer Identification Numbers for GGN and Eureka. GGN's lapsed in 2002, due to inactivity, and Eureka did not have one.

unjustified amounts of Eureka's funds

A finding that USAC is required to assess interest and late fees in every instance in which a carrier negotiates a payment plan will have the ultimate effect of further damaging the USF. The negative consequence of upholding such a decision is that it will likely discourage other carriers from coming forward to meet their obligations to USAC. USAC should not collect a windfall of interest payments, late payment and late filing fees, especially in this case where there is insufficient cause. Here, where no extensive Commission nor USAC resources were expended to determine the possible existence of Eureka's past due contributions(Eureka was unknown to USAC in May of 2004), it was Eureka who actually incurred significant administrative costs as part of evaluating the extent of its obligations prior to May 2004.

Therefore, USAC's one-year policy and its decision in the current case undermine the confidence that USAC operates solely as a functional administrator. Indeed, they raise important concerns that USAC may overstep the bounds of its limited responsibilities and make decisions with unauthorized substantive impact, thereby potentially impeding, rather than facilitating, the ultimate realization of the USF program's laudable goals.

As a further matter, Eureka paid a portion of the outstanding USF debt it owes through its underlying carrier during the relevant period, MCI, and should not be forced to pay this amount twice. Similarly, Eureka should not be forced to pay late payment and late filing fees on its obligations to USAC. As a result of USAC's decisions in this regard, USAC and the USF would receive unjust enrichment if it is allowed to collect late fees intended to compensate USAC, as an Administrator of the Fund, for costs in securing revenues from carriers, like Eureka, who have lapsed in their payment obligations, but have since come forward of their own accord to USAC in order to achieve full regulatory and payment compliance.

CONCLUSION

In light of the foregoing, Eureka respectfully requests that the FCC reverse USAC's decisions and direct USAC to remove from consideration the disputed amount of $606,982.22 as applied to Eureka's USF balance.

Respectfully submitted,

/s/ Jonathan E. Canis /s/

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Counsel to Eureka Broadband Corporation

Dated: September 30, 2004

Exhibit 1

September 20, 2000 Filing

820387

2000 FCC Form 499A Telecommunications Reporting Worksheet

Approval by OMB 3060-0855

>>> Please read instructions before completing. <<<

Annual Filing -- due April 1, 2000

Block 1: Contributor Identification Information

101 Filer 499 ID [If you don't know your number, contact the administrator at (973)-560-4400. If you are a new filer, leave blank and a Filer 499 ID will be assigned to you.]	820387
102 Legal name of reporting entity	Gillette Global Network, Inc.
103 IRS employer identification number	13-3793720
104 Name telecommunications service provider is doing business as	Gillette Global Network Inc.

105 Principal communications business [Check the one that best describes the reporting entity -- see directions. Check one box only.]

- [ ] CAP/CLEC
- [ ] Cellular/PCS/SMR (wireless telephony incl. by resale)
- [ ] Incumbent LEC
- [ ] Interexchange Carrier (IXC)
- [ ] Local Reseller
- [ ] Operator Service Provider (OSP)
- [ ] Paging & Messaging
- [ ] Payphone Service Provider
- [ ] Pre-paid Card
- [ ] Private Service Provider
- [ ] Satellite
- [ ] Shared Tenant Service Provider
- [ ] SMR (dispatch)
- [x] Toll Reseller
- [ ] Wireless Data
- [ ] Other Local
- [ ] Other Mobile
- [ ] Other Toll

If Other Local, Other Mobile or Other Toll is checked, describe carrier type / services provided:

106 Holding company (All affiliated companies should show same name here)	Gillette Global Network, Inc.
107 FCC Registration Number (FRN) [not required for April 2000 filing]	0003-7538-52
108 Management company [if carrier is managed by another entity]	
109 Complete mailing address of reporting entity corporate headquarters	39 Broadway 19th Floor New York, NY 10006
110 Complete business address for customer inquiries and complaints [if different from address entered on Line 109]	"Same"
111 Telephone number for customer inquiries and complaints	(877) 897-9111

112 All trade names that you use in providing telecommunications services. This should include all names by which you are identified on customer bills.

a	Gillette Global Network, Inc.	g	
b		h	
c		i	
d		j	
e		k	
f		l	
		m	

Use an additional sheet if necessary. Each reporting entity must provide all names used for carrier activities.

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2000 FCC Form 499A Telecommunications Reporting Worksheet

Block 2-A: Personal Contact Information

201 Filer 499 ID (from Line 101)	
202 Legal name of reporting entity (from Line 102)	Gillette Global Network, Inc.
203 Person who completed this worksheet	Stanley H. Golove
204 Telephone number of this person	(212) - 897-8330
205 Fax number of this person	(212) - 906-0103
206 E-mail of this person	Stan.Golove@ggn.com
207 Corporate office, attn. name, and mailing address to which future Telecommunications Reporting Worksheets should be sent	Gillette Global Network, Inc. Attn: Stanley H. Golove 39 Broadway - 19th Floor New York, NY 10006
208 Billing address and billing contact person: [Plan administrators will send bills for contributions to this address. Please attach a written request for alternative billing arrangements.]	

Block 2-B: Agent for Service of Process All carriers must complete Lines 209 through 213

209 D.C. Agent for Service of Process per 47 U.S.C 413	Stephen R. Bell Willkie,Farr & Gallagher
210 Telephone number of D.C. agent	(202) - 328-8000
211 Fax number of D.C. agent	(202) - 887-8979
212 E-mail of D.C. agent	Sbell@willkie.com
213 Complete business address of D.C. agent for hand service of documents	Stephen R. Bell Willkie, Farr, & Gallagher 1155 21st Street NW Washington, D.C 20036
214 Alternate Agent for Service of Process (optional)	
215 Telephone number of alternate agent	( ) -
216 Fax number of alternate agent	( ) -
217 E-mail of alternate agent	
218 Complete business address of alternate agent for hand service of documents	

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2000 FCC Form 499A Telecommunications Reporting Worksheet

Block 3: Carrier's Carrier Revenue Information

301 Filer 499 ID [from Line 101]						
302 Legal name of reporting entity [from Line 102]	Gillette Global Network, Inc.					
Report Billed Revenue for January 1 through December 31, 1999. Do not report any negative numbers. Dollar amounts may be rounded to the nearest thousand dollars. However, report all amounts as whole dollars. See instructions regarding percent interstate & international.	Total Revenue (a)	If breakouts are not book amounts, enter whole percentage estimates: Interstate (b)	International (c)	Breakouts: Interstate Revenue (d)	International Revenue (e)	
Revenue from Service Provided for Resale by Other Contributors to Federal Universal Service Support Mechanisms	0	0	0	0	0	
Fixed local service						
303 Monthly service, local calling, connection charges, vertical features, and other local exchange service including subscriber line and PICC charges to IXCs — a Provided as unbundled network elements	0	0	0	0	0	
b Provided under other arrangements	0	0	0	0	0	
304 Per minute charges for originating or terminating calls — a Provided under state or federal access tariff	0	0	0	0	0	
b Provided as unbundled network elements or other contract arrangement	0	0	0	0	0	
305 Local private line & special access	0	0	0	0	0	
306 Payphone compensation from toll carriers	0	0	0	0	0	
307 Other local telecommunications service revenues	0	0	0	0	0	
308 Universal service support revenue received from Federal or State Sources	0	0	0	0	0	
Mobile service (including wireless telephony, paging & messaging, and other mobile services)						
309 Monthly, activation, and message charges except toll	0	0	0	0	0	
Toll service						
310 Operator and toll calls with alternative billing arrangements (credit card, collect, international call-back, etc.)	0	0	0	0	0	
311 Ordinary Long Distance (MTS, customer toll free 800/888 service, associated monthly account maintenance, PICC pass-through, and switched services not reported above)	0	0	0	0	0	
312 Long distance private line services	0	0	0	0	0	
313 Satellite services	0	0	0	0	0	
314 All other long distance services	0	0	0	0	0	

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2000 FCC Form 499A Telecommunications Reporting Worksheet

Block 4: End User and Non-Telecommunications Revenue Information

Line	Item	Total Revenue (a)	Interstate (b)	International (c)	Interstate Revenue (d)	International Revenue (e)
401	Filer 499 ID (from Line 101)					
402	Legal name of reporting entity (from Line 102)	Gillette Global Network, Inc.				
	Report Billed Revenue for January 1 through December 31, 1999. Do not report any negative numbers. Dollar amounts may be rounded to the nearest thousand dollars. However, report all amounts as whole dollars. See instructions regarding percent interstate & international.	Total Revenue	If breakouts are not book amounts, enter whole percentage estimates: Interstate	International	Breakouts: Interstate Revenue	International Revenue
	Revenue From All Other Sources (end-user telcom. & non-telcom.)	(a)	(b)	(c)	(d)	(e)
403	Surcharges or other amounts on bills identified as recovering State or Federal universal service contributions	58500	95%	0	55500	0
	Fixed local service					
404	Monthly service, local calling, connection charges, vertical features, and other local exchange service charges except for federally tariffed subscriber line charges and PICC charges	280000	0	0	0	0
405	Tariffed subscriber line charges and PICC charges levied by a local exchange carrier on a no-PIC customer	6000	0	0	0	0
406	Local private line and special access service	1800	0	0	6000	0
407	Payphone coin revenues	0	0	0	0	0
408	Other local telecommunications service revenues	0	0	0	0	0
	Mobile service (including wireless telephony, paging & messaging, and other mobile services)					
409	Monthly and activation charges	0	0	0	0	0
410	Message charges including roaming but excluding toll charges	0	0	0	0	0
	Toll service					
411	Pre-paid calling card (including card sales to customers and non-carrier distributors) reported at face value of cards	0	0	0	0	0
412	International calls that both originate and terminate in foreign points	0	0%	100%	0	0
413	Operator and toll calls with alternative billing arrangements (credit card, collect, international call-back, etc.) other than revenue reported on Line 412	0	0	0	0	0
414	Ordinary Long Distance (MTS, customer toll free 800/888 service, associated monthly account maintenance, PICC pass-through, and other switched services not reported above)	4989000	79%	0%	3941000	0
415	Long distance private line services	34500	100	0	34500	0
416	Satellite services	0	0	0	0	0
417	All other long distance services	100000	95%	0	88500	2800
418	Enhanced services, inside wiring maintenance, billing and collection, customer premises equipment, published directory, dark fiber, Internet and non-telecommunications service revenue	446000				
419	Gross billed revenue from all sources (incl. reseller & non-telcom.) [Lines 303 through 314 plus Lines 403 through 418]	5915800 ~~5918000~~			4125000 ~~4120000~~	~~1047000~~ 2800
420	Universal service contribution bases [Lines 403 through 411 & Lines 413 through 417]	5469800 ~~5471000~~			4125000 ~~4125000~~ ok	~~1050000~~ 2800

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2000 FCC Form 499A Telecommunications Reporting Worksheet

Block 5: Additional Revenue Breakouts

501 Filer 499 ID [from Line 101]	
502 Legal name of reporting entity [from Line 102]	Gillette Global Network, Inc.

Most filers must contribute to LNP administration and must provide the percentages requested in Lines 503 through 510. Filing entities that use Line 603 to certify that they are exempt from this requirement need not provide this information.

Percentage of revenue reported in Block 3 and Block 4 billed in each region of the country. Round or estimate to nearest whole percentage. Enter 0 of no service was provided in the region.

			Block 3 Carrier's Carrier (a)	Block 4 End-User Telecom. (b)
503	Southeast:	Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee and U.S. Virgin Islands	0 %	0 %
504	Western:	Alaska, Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	0 %	0 %
505	West Coast:	California, Hawaii, Nevada, American Samoa, Guam, Northern Mariana Islands, and Wake Island.	0 %	0 %
506	Mid-Atlantic:	Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia	0 %	0 %
507	Mid-West:	Illinois, Indiana, Michigan, Ohio, Wisconsin	0 %	0 %
508	Northeast:	Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont	0 %	100 %
509	Southwest:	Arkansas, Kansas, Missouri, Oklahoma, & Texas	0 %	0 %
510	Total	[Percentages must add to 0 or 100]	0 %	100 %

511 Revenues from resellers that do not contribute to Universal Service support mechanisms are included in Block 4, Line 420 but may be excluded from a filer's TRS, NANPA and LNP contribution bases. To have these amounts excluded, the filer has the option of identifying such revenues below.

	(a) Total Revenue	(b) Interstate and International
Revenues from resellers that do not contribute to Universal Service	$ 0	$ 0

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2000 FCC Form 499A Telecommunications Reporting Worksheet

Block 6: CERTIFICATION: to signed by an officer of the filer

601 Filer 499 ID [from Line 101]	
602 Legal name of reporting entity [from Line 102]	Gillette Global Network, Inc.

Section IV of the instructions provides information on which types of reporting entities are required to file for which purposes. Any entity claiming to be exempt from one or more contribution requirements should so certify below and attach an explanation. [The Universal Service administrator will determine which entities meet the de minimis threshold based on information provided in Block 4, even if you fail to so certify, below.]

603 I certify that the reporting entity is exempt from contributing to:

Universal Service [X] TRS [ ] NANPA [ ] LNP Administration [ ]

Provide explanation below:

Gillette Global Network, doing business primarily as a long distance reseller, has been contributing to the universal service fund through the underlying carriers.

604 I certify that the revenue data contained herein is privileged and confidential and that public disclosure of such information would likely cause substantial harm to the competitive position of the company. I request nondisclosure of the revenue information contained herein pursuant to Sections 0.459, 52.17, 54.711 and 64.604 of the Commission's Rules. [ ]

I certify that I am an officer of the above-named reporting entity, that I have examined the foregoing report and to the best of my knowledge, information and belief, all statements of fact contained in this Worksheet are true and that said Worksheet is an accurate statement of the affairs of the above-named company for the previous calendar year.

605 Signature	Raul Martynek
606 Printed name of officer	Raul Martynek
607 Position with reporting entity	Chief Operating Officer
608 Date	September, 18, 2000
609 This filing is:	[X] Original filing [ ] Revised filing

Do not mail checks with this form. Send this form to: Form 499 c/o NECA, 80 South Jefferson Road, Whippany New Jersey, 07981
For additional information regarding this worksheet contact Telecommunications Reporting Worksheet information: (973) 560-4400 or via e-mail: Form499@neca.org

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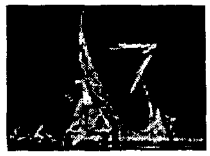
Exhibit 2

USAC Board of Directors Minutes



July 27, 1999 Minutes

Board of Directors Meeting

A meeting of the Board of Directors of the Universal Service Administrative Company (USAC) was held at the Ronald Reagan Building/International Trade Center, 1300 Pennsylvania Avenue, N.W., Washington, D.C., on Tuesday, July 26, 1999. Ms. Lisa Rosenblum, Chair of the USAC Board of Directors, called the meeting to order at 8:32 a.m. Eastern Time. Ms. Cathy Howard, Executive Assistant to Ms. Cheryl Parrino called the roll for Mr. Robert Haga, Acting Secretary.

Fourteen of the nineteen members were present, representing a quorum:	
Butler, John (Tony) – *by telephone*	Eichler, Ed
Gold, Heather	Gumper, Frank
Hess, Kevin	Hogerty, Martha – *by telephone*
Lineberry, Isiah	Ouye, Kathleen
Parrino, Cheryl	Rehberger, Wayne
Rosenblum, Lisa	Sanders, Dr. Jay
Talbott, Brian	Wheeler, Tom
Two members joined the meeting in progress:	
Abramson, David	Marockie, Dr. Hank
Three members were absent:	
Bryant, Anne	Jackson, Jimmy
Thoms, Allan	
Officers of the Corporation present:	
Haga, Robert – Acting Secretary/Treasurer	
Others present for the meeting:	
Name	**Company**
Barash, Scott	USAC
Bellucci, Vicky	MCIWorldCom

Blackwell, Mel	USAC
Boyle, Hugh	FCC
Harrison, Gina	NECA
Hays, John	FCC
Hood, Bob	FCC
Howard, Cathy	USAC
Kiser, Cherie	Mintz, Levin, Cohn, et al.
Levy, Ken	NECA
Moore, Kate	USAC
Packer-Tursman, Judy	Pittsburgh Post-Gazette
Ricker, John	NECA

Action Items:

1. **Approval of Minutes of Tuesday, April 20, 1999** – On a motion duly made and seconded, the Board approved the minutes, as amended, of the Board of Directors' meeting of Tuesday, July 26, 1999.

2. **Approval of the 1998 Rural Health Care Corporation, Schools and Libraries Corporation, and Universal Service Administrative Company Financial Audit and the Universal Service Administrative Company Agreed Upon Procedures Audit** – Ms. Parrino reviewed the status of the audits and stated that the auditors have given USAC a clean bill of health. The final audit papers should be received and signed in the near future. There are only two things left for USAC to do: (1) let the FCC know about any information in the audit that needs to be kept confidential; and (2) send a response letter to Arthur Andersen expressing USAC's agreement with the outcome of the audit and thanking them for their service. Ms. Parrino said that she has read through the draft audit once and has not found anything that would be considered confidential information, but will have staff review it one more time.

   The initial budget for the audits was $80,000 with an additional $120,000 approved at the April Board meeting. The financial audit has cost approximately $90,000 thus far but USAC has not yet been billed for the costs incurred by Arthur Andersen for its work with the FCC which is estimated to cost an additional $20-30,000. The audit of the carriers is still in progress with an estimated cost of $100,000.

On a motion duly made and seconded, the Board unanimously adopted the following resolutions:

> **RESOLVED,** That the USAC Board of Directors approves the combined and combining 1998 financial audits of the Universal Service Fund and the High Cost, Low Income, Rural Health Care, and Schools and Libraries Programs based on the approval by the RHC Committee of the administrative expenses of the RHCC, the approval by the SL Committee of the administrative expenses of the SLC, and the recommendation of the High Cost and Low Income Committee as it relates to the administrative costs of USAC and NECA, and
>
> **RESOLVED FURTHER**, That the USAC Board of Directors approves the 1998 financial audit of the Universal Service Administrative Company, including the High Cost and Low Income Program based on the approval by the High Cost and Low Income Committee as it relates to the administrative costs of the Program, and
>
> **RESOLVED FURTHER**, That the USAC Board of Directors accepts the recommendation of the High Cost and Low Income Committee to approve the USAC agreed upon procedures audit and directs management to inform the Board when corrective action has been completed regarding the issues identified in the audit, and
>
> **RESOLVED FURTHER**, That the USAC Board of Directors authorizes the CEO to send a management response to Arthur Andersen accepting the financial audits and agreed upon procedures reports and committing to take corrective action to address the minor technical and process issues that were identified in the agreed upon procedures audit.

3. **Authorization to File 1999 Draft Financial and Operational Audit Plans with the FCC** - Ms. Parrino reported that audit plans should be filed with the FCC by August 1, 1999. Arthur Andersen has been chosen for the USAC and HCLI audits. A Request for Proposal will be sent out by August 15, 1999, for operational audits of the Schools and Libraries and

the Rural Health Care Programs; the draft audits are due to the FCC by March 1, 2000.

On a motion duly made and seconded, the Board unanimously adopted the following resolution:

> **RESOLVED**, That the USAC Board of Directors accepts the recommendation of the High Cost and Low Income Committee to authorize USAC to file with the FCC audit staff the proposed draft USAC financial audit plan and operational audit plan modified to reflect the merger and the change in accounting and payroll contractors.

4. **Board Approval of the Variances between the Quarterly Contribution Base Amounts Approved by the Board and the Contribution Base Amounts Filed with the FCC** – Mr. Haga pointed out that the wrong numbers were listed in the agenda item—only the High Cost & Low Income Program numbers were entered. He will forward an updated agenda item to all members after the meeting. In looking at the history of filed projections versus projections approved by the Board, it has been determined that there is little variance for the Schools & Libraries and the Rural Health Care Programs, but as much as almost 5 percent variance for the High Cost & Low Income Program. The variance is a result of late filings, or modifications to the filings of Form 457 by carriers. The FCC sets the contribution factor: Program Demand/Revenue Base = Contribution, so it is important that the most recent information be filed. The Board amended the resolution to reflect only a dollar variance threshold and to set different dollar thresholds for the two revenue bases.

   On a motion duly made and seconded, the Board unanimously adopted the following amended resolutions:

   > **RESOLVED**, That the USAC Board of Directors, having reviewed a summary of the variances in the reported Contribution Base amounts for the quarterly filings to-date hereby authorizes prior Contribution Base variances in amounts reported to the FCC, and
   >
   > **RESOLVED FURTHER**, That the USAC Board of Directors authorizes USAC staff to file Contribution Base amounts with variances not exceeding $5.0 billion for the international, interstate, and intrastate revenue base and $2.5 billion

> for the international and interstate revenue base of the Board approved contribution base amounts, and variances at or below the above level are deemed approved by the Board. Any variances above $5.0 billion for the international, interstate and intrastate revenue base and $2.5 billion for the international and interstate revenue base must have full Board approval before staff submits the filing to the FCC.

5. **Recommended Deadline for True-up of Form 457** – Ms. Parrino explained that USAC staff recommends setting a deadline for carriers to submit a revised Form 457. There is no deadline right now and it is very costly administratively to continually true up the numbers every time USAC receives a revised form.

   On a motion duly made and seconded, the Board unanimously adopted the following resolutions:

   > **RESOLVED**, That the USAC Board of Directors directs staff to no longer accept carrier initiated requests for changes in revenues reported on prior FCC Form 457 beyond 12 months from the initial submission of the Form in question, and
   >
   > **RESOLVED FURTHER**, That the USAC Board of Directors directs staff to inform telecommunications service providers of the decision to establish a time limit on carrier initiated changes.

6. **USAC Collection Procedures for Contributors in Bankruptcy** – Ms. Parrino explained that telecommunications carriers that are required to contribute to the Universal Service Fund are increasingly filing bankruptcy. USAC proposes a change in the *USAC Collection Procedures for Contributors in Bankruptcy* to reflect language that will enable staff to write-off late payment charges for companies in Chapter 7 bankruptcy proceedings.

   On a motion duly made and seconded, the Board unanimously adopted the following resolution:

   > **RESOLVED**, That the USAC Board of Directors, having reviewed at its meeting on July 27, 1999, a summary of the current status of the *USAC Collection Procedures for Contributors in Bankruptcy*, hereby directs staff to proceed with the update to the *USAC Collection Procedures for Contributors in*

Collection Procedures for Contributors in Bankruptcy allowing for Executive Director level approval for waivers of Late Payment Charges up to $0.5 Million.

7. **Selection of January 2001 Board of Directors Quarterly Meeting Date –** Staff was requested to find different dates for the January 2001 quarterly Board meeting since the suggested dates of January 22 and 23 may conflict with events surrounding the Presidential Inauguration. The Monday and Tuesday of the following week is being suggested with the stipulation that USAC request an extension from the FCC on the quarterly filing date of February 1.

   On a motion duly made and seconded, the Board unanimously adopted the following resolution:

   > **RESOLVED**, That the USAC Board of Directors schedule January 29 and 30, 2001, as the dates for the quarterly USAC Board of Directors' meetings for January 2001.

8. **Consolidation of Data Collection and Authorization to Issue an RFP** – Ms. Parrino explained that the FCC has issued a public notice soliciting comments on consolidating the process of revenue data collection for USAC and the administrators of three other programs. Currently carriers must file four different forms. While the method of allocating costs has been decided, who will collect the data has not. The National Exchange Carrier Association (NECA) is interested as it is already doing the work for two of the programs. USAC is also interested in being responsible for the data collection because it already collects data twice a year, it is the largest of the four programs, and it is a neutral entity.

   On a motion duly made and seconded, the Board unanimously adopted the following resolutions:

   > **RESOLVED**, That the USAC Board of Directors determines that it is interested in being designated as the entity responsible for the data collection and directs staff to inform the FCC, and
   >
   > **RESOLVED FURTHER**, That the USAC Board of Directors authorizes USAC staff to issue a Request for Proposal to perform the billing, collection, and disbursement activities of the corporation including the data collection.

9. **Criteria for Determining Whether a Financial Interest Constitutes a Conflict of Interest** – Ms. Parrino recalled for the Board that at the October 1998 quarterly Board meeting, the Board approved a Code of Ethics for USAC employees. However, guidelines for determining if a conflict exists for employees who have filed a financial disclosure form indicating that he or she has a financial interest greater than $5,000 in one of the stakeholders of the programs of USAC have not been established. This action item resolution attempts to do just that.

   On a motion duly made and seconded, the Board unanimously adopted the following resolution:

   > **RESOLVED**, That the USAC Board of Directors accepts the recommendation made by the Executive Committee to approve the proposed guidelines for determining if a conflict of interest exists for employees having a financial interest greater than $5,000 in one of the stakeholders of the programs that USAC administers.

10. **Establishment of a Training and Education Policy for USAC** – Ms. Parrino explained that USAC does not have a staff training policy or a policy regarding tuition reimbursement for education, although money is currently included in the budget. In developing the policy that is before the Board today, Ms. Parrino reviewed the Training and Education Policies of such entities as the United Way, the State of Wisconsin, and three other not-for-profit organizations. She did not look at the Federal policy. The Board requested that Ms. Parrino review the Federal policy against this USAC policy to determine if there are any inconsistencies. If there are no inconsistencies, the policy can go into effect; if there are major differences, the policy should come back to the Board for approval.

    On a motion duly made and seconded, the Board unanimously adopted the following resolution:

    > **RESOLVED**, That the USAC Board of Directors accepts the recommendation made by the Executive Committee to approve the proposed *Training and Education Policy* for USAC employees provided there are no significant inconsistencies with the Federal guidelines. If there are significant inconsistencies, the policy should be brought back to the Board for further review

review.

11. **4th Quarter 1999 USAC Common and Consolidated Budget** – Ms. Parrino reported that the Executive Committee (EC) discussed the budget in great detail, especially the cost associated with the high cost data collection performed by NECA. The EC recommends that the change in accounting be approved and that the budget clearly indicate that these costs have always been a part of the administrative costs of the program and that these costs are not within USAC's control. Ms. Parrino distributed a revised Attachment B and C of the agenda item, Consolidated Budget spreadsheets, to reflect the changes recommended by the EC. The High Cost & Low Income Committee went a step further and requested that staff communicate with the FCC on how this budgetary item is beyond the control of USAC as a result of an FCC decision and ask them if USAC's proposed change is appropriate.

    Ms. Parrino reported that the budget increased 3.5 percent or approximately $1.2 million due to the significant items listed in Attachment C.

    On a motion duly made and seconded, the Board unanimously adopted the following resolutions:

    > **RESOLVED**, That the USAC Board of Directors approve a 4th Quarter 1999 USAC common budget of $718,500, and
    >
    > **RESOLVED FURTHER**, That the USAC Board of Directors approves a 4th Quarter 1999 USAC consolidated budget of $9,140,800.

12. **4th Quarter 1999 Revenue Projections and Resolutions on July FCC Filing** – Mr. Haga reported that nineteen carriers reported revenues since the original attachments were printed so the numbers on Attachment A need to change as follows: (1) under 4th Quarter, Intrastate, Interstate & International Revenues Reported, change $101,698,769 to **$101,213,538**; and (2) under 4th Quarter, Interstate & International Revenues Reported, change $38,496,295 to **$38,203,999.**

    Ms. Parrino also recommended that the resolutions be amended to reflect the new language that was added to agenda item #4 in which the Board amended the resolution to reflect only a dollar variance threshold and also to set different dollar thresholds for the two revenue bases.

    On a motion duly made and seconded, the oard

... B...
unanimously adopted the following amended resolutions:

> **RESOLVED,** That the USAC Board of Directors, having reviewed at its quarterly meeting on July 27, 1999, a summary of the current status of telecommunications service provider revenues for calendar year 1998, adjusted for revenues reported for January through June 1998, authorizes staff to proceed with the required July 30, 1999, filing on behalf of USAC, and
>
> **RESOLVED FURTHER,** That the USAC Board of Directors authorizes USAC staff to file Contribution Base amounts with variances not exceeding $5.0 billion for the international, interstate and intrastate revenue base and $2.5 billion for the international and interstate revenue base of the Board approved contribution base amounts, and variances at or below the above level are deemed approved by the Board. Any variances above $5.0 billion for the international, interstate and intrastate revenue base and $2.5 billion for the international and interstate revenue base must have full Board approval before staff submits the filing to the FCC.

13. **Policy on Board Member Attendance at Board Meetings** – Ms. Parrino stated that as USAC develops and grows, it is necessary to review Board practices and policies and determine if those practices and policies are consistent with other organizations similar to USAC. The USAC Board of Directors does not have a policy on Board member attendance at Board meetings. The experts say that it is good Board practice to have an attendance policy to ensure that the constituency of the Board is being properly represented. The USAC Board does not have the power to remove a member from the Board—that can only be done by the FCC Chairman—but the Board can recommend removal based on policy guidelines in place. If approved, the policy would go into effect immediately, and Board members would contact the USAC Board of Directors' Chairperson or USAC's CEO to report the reason for any absences.

    On a motion duly made and seconded, the Board unanimously adopted the following resolution:

    > **RESOLVED**, That the USAC Board of Directors accepts the recommendation

made by the Executive Committee to adopt the following policy regarding Board member attendance at board meetings:

- Directors should not miss more than one-half (1/2) of the number of regular or special Board meetings (either in person or by telephone) held in any twelve (12) month period, unless the USAC Board Chairman provides an exception for illness or other good reason.

- USAC shall inform the FCC Chairperson if a director misses more than one-half (1/2) of the number of Board meetings in any twelve (12) month period and shall seek his or her guidance.

14. **Criteria for and the Selection of a USAC Secretary and Treasurer** – There was much discussion and Board members were split over the two options included in the issue paper. Ms. Parrino suggested that further discussions one-on-one with Board members might reveal a better consensus.

    On a motion duly made and seconded, the Board unanimously agreed to lay the motion on the table.

Information Items:

1. **Legislative Activity** – For information only. No discussion held.

2. **Treasurer's Report** – For information only. No discussion held.

3. **Regulatory Report** – For information only. No discussion held.

4. **Status Report on the Readiness of USAC Operations for the Year 2000** – For information only. No discussion held.

5. **Report on Accounts Receivable and Collection Efforts** – For information only. No discussion held.

6. **Report on Form 457 Late Filing Fee** – For information only. No discussion held.

7. **Form 457 Reported Revenue Decreases Greater than 45 Percent** – For information only. No discussion held.

8. **Status of USAC Clarification Requests at the FCC** – For information only. No discussion held.

9. **Seeking Tax Exempt Status for USAC** – For information only. No discussion held.

10. **Status of Form 457 Audit** – For information only. No discussion held.

11. **Contract Review – *Confidential & Proprietary*** – See Executive Session below.

12. **Timeline and Key Dates** – For information only. No discussion held.

13. **Miscellaneous** – None.

Rural Health Care Program:

1. **Rural Health Care Program Status Report** – For information only. No discussion held.

2. **Status of March 5, 1999, USAC Report to the FCC** – For information only. No discussion held.

3. **4th Quarter 1999 Rural Health Care Programmatic Budget** – For information only. No discussion held.

4. **4th Quarter 1999 Rural Health Care Projections and Resolution on the July FCC Filing** – For information only. No discussion held.

5. **Miscellaneous** – None.

Schools and Libraries Programs:

1. **Schools and Libraries Program Update** – For information only. No discussion held.

2. **Update on Year 3 Improvements** – For information only. No discussion held.

3. **4th Quarter 1999 Schools and Libraries Programmatic Budget** – For information only. No discussion held.

4. **4th Quarter 1999 Schools and Libraries Projections and Resolution on the July FCC Filing** – For information only. No discussion held.

5. **Miscellaneous** – None

9. Miscellaneous – None.

High Cost and Low Income Program:

1. **High Cost Program Status Report** – For information only. No discussion held.

2. **Low Income Program Status Report** – For information only. No discussion held.

3. **Proposed Low Income Process Revision** – For information only. No discussion held.

4. **Report on Low Income Audit** – For information only. No discussion held.

5. **Report on the Implementation of a New High Cost Program for Non-rural Companies** – For information only. No discussion held.

6. **4th Quarter 1999 High Cost and Low Income Programmatic Budget** – For information only. No discussion held.

7. **4th Quarter 1999 High Cost and Low Income Projections and Resolution on the July FCC Filing** – For information only. No discussion held.

8. **Miscellaneous – USAC Competitive Bidding Policy** – This item will not come back to the Board for Board approval; it is for information purposes only.

   On a motion duly made and seconded, the Board unanimously agreed to go into ***Executive Session*** at 9:58a.m. Eastern Time for the purpose of discussing information agenda item #11, Contract Review. All persons except Board members, USAC's counsel representatives, and the minute-taker were asked to leave the meeting.

   On a motion duly made and seconded, the Board unanimously agreed to go into Open Session at 10:10 a.m. Eastern Time for purposes of reporting actions taken during *Executive Session*:

Executive Session

11. **Contract Review** – Ms. Rosenblum reported that USAC staff informed the Board of the status of USAC's current contracts with outside vendors. The Board directed staff to bring a plan of action and timetable of contracting dates to the next quarterly Board meeting in October 1999.

There being no further business to attend to, Ms. Rosenblum adjourned the meeting at 10:31 a.m. Eastern Time.

Robert W. Haga
Acting Secretary/Treasurer

Date

Exhibit 3

Facsimile Cover Sheet From Michelle Tilton

USAC

Universal Service Administrative Company

Michelle Tilton
Billing and Collections Manager

FAX TRANSMISSION COVER SHEET

Date: 6/23/2004

To: Tadas Vaitkus....................432-224-0349

From: Michelle Tilton

Number of Pages including this one: 18

Re: Annual Revenue Filings 1999 and 2000

Comments:

Enclosed please find:

Original filings of semi-annual and annual 1999 revenue
Revision to annual 1999 revenue filed
Rejection letter for late filed revision

In 2001, no form was submitted for the 2000 annual revenue, so USAC estimated. Both those forms periods are closed to downward revisions, which is why the recent rejection letters were sent.

Please let me know if you have other questions.

Michelle Tilton
202-772-5251

Exhibit 4

Relevant Correspondence from Eureka's Counsel to the Commission and USAC

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May 10, 2004

VIA ELECTRONIC MAIL AND HAND DELIVERY

<u>FOR SETTLEMENT PURPOSES ONLY</u>

Timothy Peterson, Esquire
Office of Managing Director
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Eureka Networks f/k/a Eureka Broadband Corporation (Filer ID 820387); Submissions of 499-A and 477 Forms for Prior Years 1998 - 2003; Universal Service Fund Good Faith Payment and Proposed Payment Arrangements

Dear Mr. Peterson:

We are writing on behalf of Eureka Broadband Corporation d/b/a Eureka Networks as successor-in-interest to Gillette Global Network, Inc. ("Eureka" or "the Company"; Filer ID # 820387) to address issues related to the Company's regulatory filing and payment obligations before the Federal Communications Commission ("FCC" or "the Commission") and the Universal Service Administrative Corporation ("USAC"). In particular, this letter is to request an in-person meeting with staff of the FCC to discuss Eureka's proposed payment plan for payment of amounts it may owe to the federal universal service fund ("FUSF"). Consistent with these obligations, we have enclosed a copy of a good faith payment to the FUSF that Eureka is submitting today to USAC.

As described in the attached correspondence from Eureka Chairman Jeffrey Ginsburg, Eureka recognizes that it owes past-due amounts to the FUSF and is willing to commence submission of payments pursuant to a negotiated agreement with USAC. In an effort to expedite resolution of these issues, Eureka, concurrent with this correspondence, is making a retroactive submission of FCC Universal Service forms not filed to date, including original FCC Form 499-A filings for the reporting years 1998 through 2003. Eureka is also submitting a 2004 499-Q, reflecting FUSF eligible revenues for the 1st Quarter of 2004 with payment in full.

FOR SETTLEMENT PURPOSES ONLY

Furthermore, as we have advised Michelle Tilton, Manager, Billing and Collections at USAC, the relevant forms for Eureka are being submitted simultaneously with a two good faith payments, totaling $303,933.43 to USAC's lockbox banking location in Chicago, Illinois.

Finally, enclosed for the Commission's consideration in advance of our meeting, is a Term Sheet with proposed payment plan designed to cure the outstanding balance Eureka believes is owed to the FUSF. As part of the Commission's evaluation of this proposal, we believe it vital that the Commission consider the corporate history and background of Eureka and its subsidiaries. Enclosed with this submission is a copy of Eureka Chairman Jeffrey Ginsburg's correspondence to the Commission concerning this important history. As is evident from the details of its operational history, Eureka is only now able to compile information necessary to evaluate and comply with all of its regulatory obligations.

In short, the combination of a massive reduction in its work force, the disruption to the entire Company due to the tragic events of September 11, 2001, wrenching changes in the telecommunications market, and the natural disruptions associated with coordinating merger integration activities, all have severely handicapped the Company's ability to accurately track its USF requirements. Nevertheless, the Company survived the multiple shocks to its business and is committed to complying with all regulatory obligations.

Toward that end, and as noted earlier, enclosed with its regulatory filings, Eureka has included a payment of $188,918.54 for its liability associated with USF-eligible revenues generated in the first quarter of 2004. This amount is in addition to the payment of $115,014.89, which represents the first payment in the proposed payment plan to settle the Company's outstanding USF balance of $1.15 million. It is the Company's belief that this amount represents the total amount due and owing to the FUSF by the Company to date. It is the Company's expectation that the filing of the outstanding 499-A forms, together with a proposed plan for the complete payment for the FUSF obligation of the Company to date, will ultimately satisfy Eureka's outstanding FUSF obligations.[1]

---

[1] Of course, the Company recognizes that the FCC or USAC may impose certain administrative fees, but Eureka requests that these fees and charges be waived in light of the voluntary actions of the Company. Eureka believes its actions have reduced the administrative burden on USAC and the FCC to identify, track, and calculate any outstanding balance owed by Eureka or any of its previously acquired subsidiaries.

<u>For Settlement Purposes Only</u>

Eureka hopes to reduce the FCC and USAC's administrative burden The Company's desire to comply fully with the Act and the Commissions rules and orders. Eureka is now able to identify records, track revenues, become and stay current regarding its FUSF obligations and, most importantly, continue to thrive as a profitable and healthy competitive telecom service provider to benefit end-user customers.

We, and the representatives of Eureka, look forward to meeting with you and appreciate your consideration of our request.

Respectfully submitted,

Darius B. Withers

Jonathan E. Canis
Darius B. Withers
Counsel to Eureka Networks

Enclosures (as noted)

cc: Ms. Anita Cheng, Assistant Chief, Telecommunications Access Policy Division, Federal Communications Commission
Ms. Ann Marie Trew, Universal Service Administrative Company
Mr. Jeffrey E. Ginsburg, Chairman, Eureka Networks f/k/a/ Eureka Broadband Corporation

EUREKA NETWORKS

www.eurekanetworks.net

May 5, 2004

FOR SETTLEMENT/ DISCUSSION PURPOSES ONLY

Timothy Peterson, Esquire
Office of Managing Director
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: <u>Eureka Broadband – USF Filings and Settlement Proposal</u>

Dear Mr. Peterson:

The purpose of this letter is to provide the Federal Communications Commission (the "FCC" or the "Commission") with additional background information regarding the corporate history of Eureka Broadband Corporation and its subsidiaries ("Eureka" or the "Company"), so that the Commission can more fully evaluate the Company's payment plan with respect to its outstanding USF obligations.

Eureka has been on what can only be described as an "odyssey of survival" since the meltdown in the telecom capital markets occurred and caused many service providers to file bankruptcy, liquidate their assets or otherwise cease to exist. In addition to these oppressive macro-economic conditions, Eureka also had the distinction of being headquartered in downtown Manhattan, and as a result we were profoundly impacted by the events of September 11th. We are proud to have survived the catastrophic events of 9/11 and the overall collapse of the telecom market.

Our survival has not been without many sacrifices along the way, many of which directly impacted our ability to properly calculate and to pay currently our USF charges. We are pleased that we are now able to pay our USF charges on a current fashion, and commence payments on a payment plan to address our outstanding balance. While we recognize that terms of our payment plan are inconsistent with the Commission's suggested guidelines, there are a number of reasons beyond our control that have put Eureka in its current predicament, where we are unable to meet these guidelines. We believe it is vital for the Commission to consider Eureka's corporate history when evaluating this payment plan, as it is evident from a review of the facts that the Company is only now able to compile accurate information and meet all of its regulatory obligations.

<u>Significant Acquisition Activity Created Employee Turnover and Billing Problems</u>

Eureka is a New York City-based resale and facilities provider of telecommunications services to business customers in New York, Maryland, Virginia, and Washington, D.C., that was incorporated in 1999. Eureka offers businesses a single source for voice communications services, high-speed Internet, managed security services and data networking solutions. Eureka Broadband Corporation was incorporated in 1999. Since that year, the Company has acquired seven (7) different companies, including Eureka's subsidiaries Gillette Global Network ("GGN") and eLink Communications. We changed our trade name to Eureka Networks in 2003.

Each corporate acquisition increased revenues, customers, access to investment capital, and contributed to the Company's ability to survive the brutal market conditions that prevailed during this time. However, at the time of acquisition, each target company was distressed, plagued with poor record systems, and unstable workforces, which made each merger integration even more difficult than normal. As an illustrative example, Eureka and Gillette Global Network signed a letter of intent to merge in September 2000 (this was Eureka's first acquisition). At the time, the combined entities consisted of 400 individuals. Subsequently, Eureka acquired companies with an additional 100 employees, bringing the total employment from all companies to 500 people. As of March 31, 2004, Eureka maintained a total of 70 employees, an 86% decrease in total personnel. This massive headcount reduction has had a material adverse impact on the ability of the Company to manage many administrative aspects of the business, including our regulatory obligations as applied to each separate corporate subsidiary.

In particular, the absence of a unified billing platform among the different entities created significant problems for the Company – not the least of which was tracking and categorization of revenues. The full integration of the varied operational components of each of the seven acquired businesses (including people, products, customer bases, networks, billing systems, accounting systems, customer care centers, etc.) was a difficult process that has taken a total of three years. In fact, not until late in the third quarter of 2003 did Eureka establish a single, fully integrated, billing system to enable more accurate tracking and identification of USF-eligible revenues.

<u>The Events of September 11, 2001 Profoundly Impacted the Company</u>

The Company is headquartered in downtown Manhattan at 39 Broadway and serves numerous business customers in Manhattan that are connected to downtown switching facilities. Additionally, after much effort, in April 2001, Eureka secured from the Port Authority of New York/New Jersey a contract, which gave the Company the right to deploy a fiber-optic backbone conduit in the risers of #1 and #2 World Trade Center. On the eve of the disaster, Eureka had invested over $500,000 in capital funds into the World Trade Center and was planning for the revenue from this facilities deployment to produce cash flow to grow our business, accelerate our merger integration processes, and develop a unified billing system.

Unfortunately, the disaster at the World Trade Center changed everything for Eureka. Eureka, as a competitive new entrant, relies upon larger, facilities-based, entities to maintain redundant networks which can withstand such calamities. Nevertheless, the loss of AT&T's facilities in World Trade Center Tower 7, as well as the destruction of Verizon's West St. Central Switching Office, caused many of Eureka's customers outside of the WTC complex to experience recurring service problems for months following the disaster. The collapse of the towers disrupted the entire power grid in all of lower Manhattan, which further disabled our entire New York network and customer base. Eureka was very fortunate that we did not lose any employees on that fateful day – our WTC project team had a meeting scheduled for 9:00 am on the 88th floor. All made it out safely, but witnessed the tragedy first hand.

In the immediate wake of the disaster, Eureka recognized the tangible threat to its revenue base and focused our activities on business survival. These activities included the dismissal of 120 people within weeks (reducing personnel from 200 to 80) and focusing 100% of the Company's resources on preservation of our remaining customer base. As noted herein, however, these survival activities resulted in a three year period wherein the Company struggled to comply fully with its regulatory obligations due to lack of access to records, absence of personnel with applicable knowledge, and a targeted focus on the preservation of existing, and precious, revenues.

The Company's Financial Condition

In a manner similar to other telecom service providers, Eureka incurred losses from operations and raised capital to deploy network facilities, all as part of an effort to grow and find new sources of revenue. At our peak in mid-2000, the Company's monthly "burn rate" was approximately $4 million per month. Unlike many other companies, which today are no longer in business, we corrected course early, pulling back from plans to enter more remote geographic markets, and concentrated our efforts in only two markets.

Since July 2001, Eureka has successfully raised equity capital to support our operations and fund our steadily shrinking operating losses. However, a significant use of these proceeds has been to resolve disputes with secured creditors that were threatening to place the Company into involuntary bankruptcy. Eureka continues to operate and has, thus far, successfully avoided a bankruptcy filing. Unfortunately, in an attempt to avoid bankruptcy, the Company has been forced to prioritize our use of limited capital to satisfy creditor's then-immediate claims. These liabilities, which have been satisfied, included:

- A secured lease with Cisco Capital with $5 million outstanding
- A secured loan with Comdisco with $1.4 million outstanding
- An office lease in New York City with 8 years and $17 million in rent payments remaining in the term
- An office lease in Bethesda, MD with over 2 years and $1.5 million in rent payments remaining in the term

If Eureka had been unable to resolve these liabilities, the Company would have been forced to file for bankruptcy protection. Unfortunately, it would have been during those proceedings, under the supervision of the bankruptcy court that the Company would have discovered its obligations to USF associated with the companies we had acquired, in some cases as far back as 1998.

Eureka has, however, achieved greater financial stability and made substantial improvements to our financial position. For the first time, in March 2004, the Company reported positive earnings before interest, taxes, depreciation, and amortization (EBITDA). Nevertheless, Eureka still continues to operate with negative working capital and is not yet in a position to pay its outstanding USF obligations within one year, as suggested by the FCC's guidelines. A copy of financial statements from the past two years, and the Company's March 31, 2004 financial statements, are enclosed for your review.

In closing, the Company regrets that it has not complied with its USF payment obligations and we want to bring the Company into full compliance. We hope that this letter has shed some light on our fight for survival and thought process along the way. We are now positioned to make contributions to the USF on a current basis, address our arrearage in a reasonable settlement and most importantly, continue to thrive as a profitable and healthy competitive telecom service provider.

We look forward to meeting you in person at your convenience to review and discuss our proposal and answer any questions you may have.

Very truly yours,

Jeffrey E. Ginsberg
Chairman

Encl.

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August 12, 2004

VIA HAND DELIVERY AND ELECTRONIC MAIL

Jeffrey Mitchell, Esq.
Office of the General Counsel
Universal Service Administrative Company
2000 L Street, N.W. Suite 200
Washington D.C. 20036

Re: **Federal Universal Service Fund Contribution Payment Plan for Eureka Broadband Corporation, successor-in-interest to Gillette Global Network, Inc. (Filer ID # 820387)**

Dear Mr. Mitchell:

As we discussed in our prior telephone conversations, Eureka Broadband Corporation d/b/a Eureka Networks as successor-in-interest to Gillette Global Network, Inc. ("Eureka" or the "Company") requests a meeting with the Universal Service Administrative Company ("USAC") to obtain clarification concerning various issues related to invoices, payments and records associated with Eureka's outstanding obligations to the Universal Service Fund ("USF").

In particular, the Company believes that it would be beneficial to both entities if representatives of Eureka and personnel from USAC meet with one another in advance of USAC providing its formal payment plan recommendation to the Federal Communications Commission ("FCC"). A joint meeting between the two entities will ensure that the information USAC provides to the FCC reflects an accurate accounting of all outstanding invoices, payments and adjustments relevant to Eureka and its predecessor companies.

We believe any meeting will be most productive if we discuss the following topics, including: (1) the basis for the balance USAC believes Eureka owes; (2) an explanation of USAC's reliance on reports submitted in 1999 and 2000 by Eureka's predecessor Gillette Global Network; (3) whether any credits or adjustments are applicable to Eureka's accounts; and (4) why Eureka received a DCIA Notice Letter dated July 20, 2004, even though Eureka has come forward voluntarily to propose a payment plan to satisfy its outstanding USF balance.

Finally, in advance of a meeting, we would appreciate if USAC provided Eureka with a spreadsheet itemizing the running total of all credits, payments, late payment fees and outstanding sums, and the dates of any and all DCIA transfers. This information should facilitate an efficient and informative meeting between the two entities.

As we have discussed previously, it is imperative that we receive this information to afford Eureka the ability to know whether it can maintain its existing course of conduct of paying its USF balance per its proposed payment plan submitted on May 10, 2004, or whether USAC believes the existing payment plan should be modified.

The week of September 6, 2004 represents the best range of dates for an in-person meeting with Eureka personnel most qualified to address these issues but we are flexible regarding specific dates and format of the discussion. Please feel free to contact the undersigned to advise us of USAC's availability to host a meeting. We look forward to hearing from you shortly.

Respectfully submitted,

Darius B. Withers

Jonathan E. Canis
Darius B. Withers
Counsel to Eureka Networks

cc: Mark A. Carmichael, Vice-President, Finance, Universal Service Administrative Company
Mr. Michael Lawrence, Universal Service Administrative Company
Mr. Timothy Peterson, Office of Managing Director, Federal Communications Commission
Mr. Jeffrey E. Ginsberg, Chairman, Broadband Corporation d/b/a Eureka Networks
Mr. Adam Lewis, Vice-President, Eureka Broadband Corporation d/b/a Eureka Networks

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DUPLICATE

PROPRIETARY FINANCIAL INFORMATION REDACTED

PROPRIETARY EXHIBITS REDACTED

September 24, 2004

RECEIVED
SEP 24 2004
BY: dw

VIA ELECTRONIC MAIL AND HAND DELIVERY

Jeffrey A. Mitchell, Esquire
Associate General Counsel
Universal Service Administrative Company
2000 L Street, N.W., Suite 200
Washington D.C. 20036

CONFIDENTIAL
FOR SETTLEMENT/ DISCUSSION PURPOSES ONLY

Re: **Consideration and Acceptance of Eureka Broadband Corporation's Payment Plan Proposal; September 9, 2004 Meeting with Staff of the Universal Service Administrative Company**

Dear Mr. Mitchell:

We are writing to thank you for arranging and participating in the meeting of Thursday, September 9, 2004, between staff members of the Universal Service Administrative Company ("USAC") and representatives of Eureka Broadband Corporation ("Eureka" or "the Company") as successor-in-interest to Gillette Global Network, Inc. ("Gillette"). We are also writing to provide you with Eureka's conclusions regarding the undisputed amount owed by the Company to the Universal Service Fund ("USF") and to provide USAC with supporting documentation for the Company's proposed payment plan.

As an initial matter, we must note our sincere disappointment that after having provided USAC with a significant amount of information to perform an analysis of Eureka's payment plan request on May 10, 2004, well over four months ago, Eureka did not receive a definite and written calculation from USAC specifying the amount of money the Company may owe to the USF until late Monday, September 20, 2004.

Similarly, although we initiated discussions regarding a payment plan with the Federal Communications Commission ("FCC") in April of this year, we did not receive copies of proposed payment plan documents, including a deferred payment plan promissory note and security agreement, until Tuesday, September 21, 2004. Nevertheless, the Company will do everything in its power to work cooperatively with USAC and the FCC to reach a resolution regarding a payment plan prior to the end of the federal government's fiscal year on September 30, 2004.

USF Balance Reconciliation and Appeal

Eureka has conducted a review of the invoice and balance calculations provided to the Company earlier this week. As anticipated during the meeting on September 9, 2004, Eureka disagrees with certain aspects of the final calculations performed by USAC. In particular, Eureka disagrees with USAC's application of monies the Company paid to MCI, Inc. (*f/k/a* Worldcom, Inc.) in prior years for USF charges imposed on services purchased by Eureka.

Furthermore, Eureka disagrees with USAC's decision to consider all revenues reported by Gillette for 1999 and 2000 as attributable to Eureka's USF obligation, rather than the revenue amounts reported by Eureka in May of this year. Eureka believes that the amounts the Company reported in *FCC Form 499s*, submitted in May of this year reflect accurately the actual USF-eligible revenues for Gillette in 1999 and 2000.

As we discussed and confirmed with you and Mr. Timothy Peterson of the FCC during the meeting and in subsequent communications, Eureka will appeal to the Commission the decision by USAC to apply either of these amounts to Eureka's USF obligation. The Company will file its appeal shortly.

Eureka's analysis of the outstanding USF debt subject to a payment plan, absent the payments to MCI and application of revenues attributed to Gillette, totals $677,451.45. A detailed calculation of the amount of USF obligation attributable to Eureka is enclosed at Exhibit A. An updated payment schedule based upon this balance is enclosed at Exhibit B.

Supporting Information for Eureka's Payment Plan

As promised during the meeting, we have enclosed at Exhibit C a copy of a cash flow projection for Eureka. It is our understanding that USAC and the FCC will utilize this information to evaluate Eureka's proposed payment plan. In light of Eureka's continued compliance with the terms of its proposed payment plan, including an initial down payment in May of 2004 of $115,014.89 – which was 10% of the calculated balance of $1,150,148.57 – and the Company's consistent submission of monthly payments, Eureka has revised its amortization schedule to reflect remaining payments under the plan. Please be aware that since the submission of its payment plan in May of this year, Eureka has made payments to the USF totaling $357,265.82.

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Furthermore, as soon as they become available from the Company's outside auditors, we will provide USAC with audited financial statements. Notably, in Eureka's earlier submissions in May and July of 2004, Eureka provided USAC with financial statements supported by a declaration from the Company's Chairman that the information in the financial statements are true and correct in all material respects. We do not believe that the absence of these documents should create any delay in USAC providing Eureka and the FCC with an opinion regarding the proposed payment plan.

Payment Plan Documents and Remaining Tasks

Eureka is in the process of reviewing the requirements for a payment plan as described in the documents forwarded to us by USAC on September 21, 2004. Upon receipt of a determination by USAC and the FCC of Eureka's proposed payment plan terms, Eureka can begin discussions regarding specific conditions and requirements contained within the payment plan documents.

In closing, Eureka appreciates the FCC's desire to obtain resolution of this matter quickly. We will continue to provide information to USAC and the FCC in an effort to achieve agreement on a payment plan prior to September 30, 2004. We eagerly await receipt of acceptance of the Company's proposed payment plan terms.

Respectfully submitted,

Darius B. Withers

Jonathan E. Canis
Darius B. Withers
Counsel to Eureka Broadband Corporation

Enclosures (as ncted)

cc: Mr. Paul K. Cascio, Assistant General Counsel, Office of the General Counsel, Federal Communications Commission
Ms. Cathy Carpino, Esq., Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission
Ms. Anita Cheng, Esq., Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission
Mark A. Carmichael, Vice-President, Finance, Universal Service Administrative Company
Mr. Michael Lawrence, Universal Service Administrative Company
Mr. Jeffrey E. Ginsberg, Chairman, Eureka Broadband Corporation d/b/a Eureka Networks
Mr. Adam Lewis, Vice-President, Eureka Broadband Corporation d/b/a Eureka Networks